

1 Supreme Court. Okay.

2 MR. VINATIERI: Well, no, there's -- the
3 Supreme Court left a -- the door open a little bit. You
4 could -- if you have evidence to prove that in fact it's
5 not a -- a direct benefit, then it is a tax.

6 So, I just want to make sure that this is not
7 exclusive. So, that's why I -- I offered the language
8 that I did.

9 Secondly, under -- under item 2, those of us
10 who have been -- those of us who have been involved
11 with childhood lead to some extent have been a bit
12 frustrated with the fact that the Board does the bills
13 but the Department of Health Services is responsible for
14 this exclusion or exemption claims.

15 And I want to make sure that if the Board is
16 going to take the position that you have to file these
17 exemption claims with the D.H.S. that there needs to be
18 some type of time line upon which D.H.S. has to work on
19 that particular claim of exemption, so that it -- they
20 can't just sit -- let it sit there and go on and on and
21 on, which has happened a couple years back.

22 So, I added the language for the last sentence
23 of item 2 that would be, "If the State Director,"
24 meaning Director of D.H.S. "has not acted upon the
25 petitioner's application within six months of the filing
26 of the application or applications, the claimant may
27 deem the application denied and proceed to the Board."

28 MS. MANDEL: Well, what -- what -- where do we

1 get that from?

2 MR. VINATIERI: I just made it up.

3 MS. MANDEL: Okay.

4 MR. MICHAELS: Did you consult the Director of
5 Health Services?

6 MR. VINATIERI: I did not. I did not. There
7 has -- there has to be some time limitation because
8 claims have been sitting there.

9 MS. MANDEL: How -- how do we -- so, the
10 statute -- the statute provides they do the exemption,
11 right, and we do whatever the petition is.

12 MR. VINATIERI: Right.

13 MS. MANDEL: And -- and this sort of
14 ordering -- is this ordering of -- of we're going to --
15 don't file with us until you -- you've been through the
16 exemption process?

17 MR. VINATIERI: That's precisely --

18 MS. MANDEL: Wait, wait, wait.

19 MR. VINATIERI: -- the answer that you get
20 today.

21 MS. MANDEL: Uh-huh.

22 MR. VINATIERI: That's exactly the answer you
23 get.

24 MS. MANDEL: But -- but is that -- that's a
25 matter of structure for us, or that comes from the
26 statute? That's a matter of, you know, appropriate --
27 you know, makes the most sense to handle them in that
28 order or --

1 MR. HUDSON: The statute is not clear. I just
2 read it the other day. It's not clear at all about
3 that.

4 MS. MANDEL: Okay, I'm just wondering --

5 MR. MICHAELS: What do you mean, not clear?

6 MR. HUDSON: It's not clear about whether or
7 not they have to get a formal denial of the -- their
8 request for exemption for us to hear it.

9 MR. MICHAELS: From D.H.S.

10 MR. HUDSON: From D.H.S. first. So, the order
11 is not clear.

12 MR. VINATIERI: I -- I think the way it's been
13 administered, nothing was happening for the first couple
14 of years and then I think a decision was made to say,
15 okay --

16 MS. MANDEL: So what you --

17 MR. VINATIERI: -- decision -- decision was
18 made here.

19 MS. MANDEL: What you -- what you want is so
20 that the filing of -- of petition with the Board will
21 goose Health Services to act on the exemption?

22 MR. VINATIERI: I don't know that I'd use that
23 terminology, but, yes.

24 MS. MANDEL: Well, you know me, I made a record
25 even though there's a transcriber in the room.

26 MR. VINATIERI: What's happened is the Board
27 has administratively determined -- the staff's
28 determined not to move forward on any petition that's

1 filed under this program until it's -- something's been
2 filed at the D.H.S. And -- and on occasion my
3 understanding is that things get filed at D.H.S. and
4 there's no action on anything.

5 MS. MANDEL: Well --

6 MR. VINATIERI: So, we need to put some teeth
7 into it.

8 MS. MANDEL: Well, I -- I would suggest that
9 one be careful about the deemed denial six-month
10 language only because in other forums that has been
11 something of a contested problem, concern, whatever.
12 But -- but --

13 MR. LEVINE: I have no opinion on this one way
14 or the other --

15 MS. MANDEL: Right.

16 MR. LEVINE: -- but I think your point is well
17 taken that if we were going to do this, it shouldn't be
18 deemed denied, it should just be focused on our moving
19 forward. If they haven't acted, we move forward on
20 the -- the petition.

21 MR. MICHAELS: I don't think you can.

22 MR. VINATIERI: Well, no -- you, you can.
23 What's happened is the staff here -- and it makes
24 sense -- the staff here said, "Look, we don't want to
25 deal with this petition" --

26 MS. MANDEL: Yeah, yeah, because --

27 MR. VINATIERI: -- "until D.H.S. has done their
28 thing."

1 MS. MANDEL: Oh, okay, so this --

2 MR. VINATIERI: And D.H.S. sits on it and does
3 nothing, then --

4 MS. MANDEL: Yes, so this -- what this is
5 saying -- yeah, you know, because I'm reading it as
6 we're sitting here, this is -- this is saying the
7 Board -- you know, you file your petition --

8 MR. VINATIERI: Right.

9 MS. MANDEL: -- but the Board is not going to
10 act until D.H.S. has acted. And maybe what you need to
11 have would be to sort of address the concern that if
12 things are languishing over there -- and I don't know
13 what the contact is between D.H.S. and the Board, is
14 that somehow there's some, you know, notification
15 because it could be that something is languishing over
16 there. In which case it's possible that the Board staff
17 could go, you know, "Hello, you know we're -- we're
18 going to get hammered on our backlog if you guys don't
19 start doing -- handling your backlog," or it could be
20 that something -- the thing with the deemed denial kind
21 of concept is it's possible something could be -- they
22 could be actually working on it. And then --

23 MR. LEVINE: And then if they granted it --

24 MS. MANDEL: Or they could --

25 MR. LEVINE: -- which the taxpayer wants, the
26 feepayer wants, we would say that would mean they can't
27 grant it any more. And the feepayer doesn't want that.

28 MS. MANDEL: Yeah, so --

1 MR. LEVINE: They'll want a chance to win over
2 there.

3 MS. MANDEL: It's a --

4 MR. VINATIERI: Well, okay, if -- you
5 understand what the concern is. Maybe the deemed denial
6 is not the way to go, but I think -- I think it should
7 be a situation where internally here, if you have filed
8 your exemption, nothing has happened within six months
9 at D.H.S., then you should not be detrimented from
10 moving forward in the Board of Equalization appeal
11 process.

12 MS. MANDEL: Well, you should -- it's sort of
13 like you should, you know, be able maybe to send a
14 letter saying, "Hey, you know, I filed this thing. I
15 haven't heard anything at all from them," you know,
16 blah, blah, blah. "I'd like to move forward with my
17 petition."

18 I mean that's what you're -- but maybe, you
19 know, maybe that's not enough time for D.H.S. I don't
20 know what their normal process is and what their
21 staffing levels are --

22 MR. VINATIERI: It's very slow.

23 MS. MANDEL: -- and blah, blah, blah, blah,
24 blah.

25 MR. VINATIERI: Very, very slow.

26 MR. LEVINE: We've had some cases that the
27 Board just decided that it took a long time through the
28 process.

1 MS. MANDEL: Right. But there may be issues
2 about --

3 MR. VINATIERI: Two or three years.

4 MS. MANDEL: -- why they took a long time
5 through the process which might not just be that they
6 were sitting in the drawer at D.H.S.

7 MR. HELLER: Just -- before we wrap up, the
8 thing is, you know, we do want the expertise of the
9 Department of Health Services before we go ahead and try
10 to decide whether what they're doing is correct or not.

11 So, moving forward is obviously -- could be
12 necessary in some cases where it's just gone on a
13 ridiculous amount of time.

14 MS. MANDEL: Yeah, but maybe --

15 MR. HELLER: Otherwise it's disadvantaging the
16 Board, I think, with the amount of information and
17 expertise they can bring to bear on an issue.

18 So we may just want to think about it a little
19 more and maybe we can still submit comments through at
20 least the end of December meeting.

21 So if you even want to think about it a little
22 further --

23 MS. MANDEL: Yeah, I mean, even if you -- even
24 if you -- if you were -- if someone was able to figure
25 out, you know, something, then your first sentence would
26 be, you know, "will not" -- you know, "normally will not
27 act," or whatever written in.

28 But you'd have to be getting -- I mean, I'm not

1 saying how I really -- these are just sort of trying
2 to mesh everybody's comments. But then you -- you would
3 have to have something because it would be in the
4 tax petitioner's lap to tell the Board what's going on.

5 Much like when you have a Court case that's on
6 hold because of something else, you periodically have to
7 say where things are I don't know. But --

8 MR. HELLER: Well, we can consider it and maybe
9 even consider putting in some discretion in the Board to
10 go forward on some circumstance or --

11 MR. VINATIERI: I think the important thing is
12 however you want to denote it, there needs to be
13 something that says if it sits over there and it's been
14 an unreasonable period of time, unreasonable in my view
15 is six months, then the Board should move forward -- or
16 the Board moves forward in the appeal process.

17 Otherwise, you're -- you're making a mockery of
18 the appeal process and that's the problem with these
19 bi -- where you have two agencies --

20 MS. MANDEL: Bifurcating.

21 MR. VINATIERI: -- involved, or three
22 agencies. There's another's one where there's three
23 agencies.

24 MS. MANDEL: That's why I used the term
25 "goose."

26 MR. VINATIERI: I wouldn't say that, Marcy.
27 But you can.

28 MS. MANDEL: Yeah, but I'm a girl and I can.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

---oOo---

SECTION 2018

MS. PELLEGRINI: Okay. We'll move on now to 2018, that's Petition for Redetermination Pursuant to Covered Electronic Waste Recycling Fee.

MR. MICHAELS: These are all brand new, this program, right?

MS. PELLEGRINI: Yes.

MR. MICHAELS: So, we don't really have a track record on dealing with the Department of Toxic Substances Control?

MS. MANDEL: We do in other --

MR. MICHAELS: On this --

MS. MANDEL: Oh, okay.

MR. VINATIERI: My -- this is Joe. My concern on this one was what -- the way this is written, I'm assuming that if the -- if D.T. -- D.T.S.C. says no, then it's into the appeal process here at the Board of Equalization, is that correct?

MR. HELLER: I think that -- that one was basically -- the statutory language seems to be very clear that only that agency can make a decision on whether something is covered electronic or is a covered electronic device.

That hasn't been determined by the Board as of yet. But that was just an attempt to kind of bring the language of the statute --

MS. MANDEL: So you think it's like --

1 MR. HELLER: -- into our current regulations.

2 MS. MANDEL: -- the same thing as what's a
3 hazardous waste, that only they have the authority?

4 MR. GAU: Yeah, I think -- David Gau. I think
5 Brad is correct, I think they wrote it specifically that
6 way, the D.T.S.C. reg.

7 MS. MANDEL: So that -- so the answer would
8 be --

9 MR. GAU: That the responsibility is with them.
10 Yeah.

11 MR. HELLER: But if that's the only ground that
12 you're raising a petition on, then that would be the
13 D.T.S.C.'s forum.

14 MR. GAU: Yeah.

15 MS. MANDEL: And then does -- does the law then
16 provide that if you don't agree with D.T.S.C. that you
17 sue D.T.S.C.?

18 That's -- you know, he's -- that's where he's
19 sort of wondering what's the -- or do we not look at
20 what the next step is when you don't agree with --

21 MR. VINATIERI: That's my concern.

22 MR. HELLER: I mean, I don't know.

23 MS. MANDEL: What happens on hazardous waste?
24 We don't know yet. We just know we don't have the
25 authority to decide what's a hazardous waste.

26 MR. VINATIERI: But you have the authority to .
27 answer all those other questions around that, which I
28 would think would be the same situation here.

1 MS. MANDEL: Yeah, but --

2 MR. VINATIERI: I'm anticipating that this is

3 going to eventually be a -- a big deal.

4 MS. MANDEL: What -- what's it covered.

5 MR. VINATIERI: That's correct.

6 MR. MICHAELS: That's correct.

7 MR. VINATIERI: It's going to -- it's going to

8 become a really big issue. Or -- it's so new that we

9 don't see it yet, but it's going to happen.

10 MR. MICHAELS: Yeah, eventually.

11 MR. VINATIERI: Yeah.

12 MR. HELLER: And this was not I intended to

13 take a -- necessarily a position on, anyway,

14 legislation. It was really just an effort to try to

15 make sure that that issue was addressed in these rules.

16 So --

17 MS. MANDEL: So the people know they're

18 supposed to go to the --

19 MR. HELLER: -- calling us.

20 MR. LEVINE: What happens if they say, "yes"?

21 Do we process the grants or they --

22 MS. MANDEL: The refund.

23 MR. HELLER: They forward it to us. We have

24 all the funds.

25 MR. VINATIERI: Well, there's got -- my view

26 is, I'm not -- I'm not a real fan of D.T.S.C.

27 MR. HELLER: Marcy --

28 MR. VINATIERI: And -- to say the least,

1 and I'm concerned that if somebody says "no" over there,
2 that there's no appeal right at all.

3 MS. MANDEL: Well, somebody could look at the
4 statute and figure out.

5 MR. VINATIERI: Well --

6 MS. MANDEL: Maybe. You're -- you're
7 suggesting that -- that -- I mean, I guess if you look
8 at the statute and say, "I think that is, if there is an
9 appeal right to the Board, or that it is an issue that
10 the Board can decide and that staff's wrong in saying
11 that only -- only D.T.S.C. --

12 MR. HELLER: And this regulation --

13 MS. MANDEL: -- or -- or if you look at the
14 statute and you see that you don't think it's something
15 the Board can consider or that there's an appeal right
16 to the Board on it from D.T.S.C. or even an ability to,
17 you know, sue D.T.S.C. or file a claim on the issue or
18 something then, you know, you need to talk to your local
19 Legislator.

20 MR. VINATIERI: Well, then let me -- let me
21 ask -- let me ask the question. If that's the case,
22 if -- if the staff's view is there is no right to appeal
23 to the Board of Equalization after D.T.S.C. says no,
24 would the Board consider legislation to move forward and
25 allowm the Board to have that appeal authority?

26 MR. MICHAELS: Well, there's been a lot of
27 conversation about all this for months and months and
28 months.

1 I would think there --

2 MS. MANDEL: I mean, the impression I have from
3 this little rule is that you guys think this is just
4 like hazardous -- the decision of what's a hazardous
5 waste. Just from reading this.

6 MR. HELLER: Really, there wasn't a desire to
7 analyze it, but what we did do is basically say that the
8 petition -- based on the statute it does look like the
9 petition should at least be sent to the Department of
10 Toxic Substances Control.

11 So, that's really all that this says, is that
12 we'll go ahead, that it should be filed with them and
13 that we'll forward it to them if it's filed with us.

14 And so, the regulation that we're writing here
15 isn't designed to necessarily curtail the Board's
16 authority to decide this issue. It's really just
17 designed to make sure that a petitioner who has this
18 issue is getting their petition sent to the right
19 agency.

20 MS. MANDEL: Can you -- can you -- what's
21 the -- what's the statute on that? You don't know?

22 MR. HELLER: No, I don't have all --

23 MS. MANDEL: Okay.

24 MR. MICHAELS: What's your question?

25 MS. MANDEL: I was just wondering what the
26 statute was so I --

27 MR. HELLER: But essentially what it's really
28 just trying to do is -- is provide some procedure so if

1 you're somebody who has this issue, what do you do to at
2 least start the review process. And it's telling you
3 that basically we do want you to file within -- if you
4 file with us, we'll forward your petition to them so
5 that they can rule on the issue.

6 It doesn't -- it doesn't equivocally or
7 unequivocally say that, that the Board can't hear this
8 in the future; the Board can't decide on this; the Board
9 doesn't have authority to interpret those statutes.
10 So --

11 MS. MANDEL: So, there's -- is there -- there's
12 a statute that provides for petitions to Toxics on this
13 issue?

14 MR. HELLER: That's correct.

15 MS. MANDEL: As opposed to the kind of statute
16 that says the Board of Equalization cannot decide what's
17 a hazardous waste?

18 MR. HELLER: That's for --

19 MS. MANDEL: In comparison to --

20 MR. HELLER: It really says that the Department
21 of Toxic Substances Control will decide, I think,
22 something like that. But it doesn't specifically say
23 that we -- we won't or can't exactly, but I think that
24 might be the contention.

25 MS. MANDEL: Okay. But -- okay.

26 MR. HELLER: But it really wasn't designed to
27 advance the Board on deciding that issue. It was really
28 designed to just help somebody who needs to file a

1 petition and to know how to do it and where it needs to
2 go, is really all that that regulation is trying to do.

3 So that we can still discuss the issue in the
4 future, even after this regulation was promulgated. It
5 wouldn't foreclose it.

6 ---oOo---

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECTION 2019

MS. PELLEGRINI: Okay, moving on to 2019, and that's the Scope of Petition for Redetermination Pursuant to Water Rights Fee Law.

Any comments?

MR. VINATIERI: I had the same issue on this one as I did on the prior one, and that is what's the State Board jurisdiction if -- if, once again, Water Resources Control Board says no?

I just want to make sure that there's some administrative due process. I don't have a great deal of -- of confidence that those other agencies will look at things from an objective standpoint, to be very candid with you.

MR. HELLER: It's also very similar to the prior issue. It's basically there's statutory authority granting the State Water Resources Control Board the authority to look at those issues. So, it's really just advising people that that's where your petition should go.

But it really -- you know --

MS. MANDEL: You're going to have to look, Joe, and see whether -- because, I mean, I don't know, I haven't read all these -- what provisions they pick up and -- administrative provisions and whether -- whether they -- you know, these are new laws, and they -- whether they have retained review -- through whatever provisions they've adopted, retained Board of

1 Equalization hearing review or not.

2 MR. VINATIERI: I --

3 MS. MANDEL: And maybe they haven't. I don't

4 know. But --

5 MR. VINATIERI: I believe -- this one is a

6 little bit different than the one before, because this

7 one comes under the Fee Collection Procedures Law, which

8 is an umbrella --

9 MS. MANDEL: Right.

10 MR. VINATIERI: -- of a bunch of cookie jar

11 taxes --

12 MS. MANDEL: Right.

13 MR. VINATIERI: -- that the Board has to

14 administer and --

15 MS. MANDEL: Right.

16 MR. VINATIERI: -- I believe under the Fee

17 Collection Procedures Law there's appeal rights. I'm

18 not sure about on this electronic waste recycling.

19 MR. HELLER: Well, on the electronic -- I'm

20 sorry.

21 MR. VINATIERI: That's a little bit different,

22 but I believe -- I believe there is the right under the

23 Fee Collection Procedures Law. It's a really screwy --

24 MS. MANDEL: Well, then if it --

25 MR. VINATIERI: -- setup.

26 MS. MANDEL: And then --

27 MR. HELLER: The language is in the water code.

28 It is language reserving that authority to the State

1 Water Resources Board, it comes from. It's not in the
2 Fee Collection Procedures Law, because that's really a
3 general set of procedures that these are just subject
4 to.

5 MS. MANDEL: Right, then you might -- then you
6 might have some --

7 MR. HELLER: So, there's room where different
8 people could look at those two sets of codes and really
9 come up with different interpretations on how they
10 interact.

11 MS. MANDEL: Oh, joy.

12 MR. HELLER: And it really wasn't -- it was
13 designed, like I said, to try to give everybody -- to
14 cover all of our issues and provide guidance to the
15 public on how to get things filed.

16 MS. MANDEL: Right.

17 MR. HELLER: We really didn't -- the scope of
18 this project really wasn't to try to resolve the entire
19 scope of the Board's jurisdiction --

20 MS. MANDEL: Yeah.

21 MR. HELLER: -- on every possible issue.

22 MS. MANDEL: So, what's going to happen is in
23 the future, when these -- somebody files a water rights
24 fee on this issue, they'll petition Resources Control
25 Board -- Water Resources Control Board. And if they get
26 a nyet from Water Resources Control Board, then they can
27 come to you and "Joe, Joe, what do we do?"

28 And then I guess that frames the --

1 MR. VINATIERI: That's -- that's the situation.

2 MR. HELLER: Well, what I can do is I can go
3 ahead and send off -- send Joe the -- the statutory
4 references I refer to and -- and any comments, if he
5 wants. I don't know, what -- detail about what he
6 thinks the scope is of our -- our review function and
7 then we can take those in consideration or forward them
8 to the Board Members for their consideration.

9 MR. VINATIERI: Yeah, I -- I'm just -- I'm
10 concerned. I know these little cookie jar taxes that
11 there be some type of administrative due process, for
12 appeal right. And the Board is well set up to do it
13 because it's been doing it for a long time, and does a
14 pretty good job. But --

15 MS. MANDEL: Yeah, you probably -- you know,
16 if -- you probably ought to put that kind of -- think
17 about putting that kind of thing together if only -- if
18 only for the reason that if this stays exactly the way
19 it is, he's going to come and start talking before the
20 Board saying exactly this stuff, and then you're going
21 to have Members asking you those questions.

22 And so, you ought to be at the very least --

23 MR. VINATIERI: Better to ask them here than --

24 MS. MANDEL: Right.

25 MR. VINATIERI: -- at a later point in time.

26 MR. HUDSON: This is Tom Hudson, from Bill
27 Leonard's office. I'm not sure if this is the right
28 time to bring this up, but I know we had requested in

1 the past, and I know other folks have, that each one of
2 these sections have a statutory reference beside them.

3 Is that -- is that -- I know that's
4 a monumental task, but I'm just a messenger here, so is
5 that -- is that being done as we speak?

6 MS. PELLEGRINI: The intent is to put together
7 a matrix on these for the meeting and --

8 MS. MANDEL: Because -- because, you know, if
9 you don't that, somebody is going to be asking Tom to do
10 that.

11 As you guys really know --

12 MR. HELLER: We're certainly not trying to
13 burden Tom, but -- we're actually trying to put together
14 and the matrix really is going to state -- it will state
15 the section number, the title of the section and then
16 provide references to both the authority for rulemaking
17 on the issue, and the actual statutory issue being
18 addressed or developed.

19 And then it will provide some short comments
20 about whether or not that's -- what we're doing is -- is
21 coming from an existing regulation; it's coming out of
22 statute or -- or an existing publication, or even just
23 modifying something that's already out there.

24 So that you can kind of track where we've come
25 from from the past and also see what our authority is
26 going forward. And all this is absolutely necessary for
27 the rulemaking process which we're hoping to get into in
28 January.

1 And we're hoping to have all of this done
2 hopefully sometime next week, is our goal. We were --
3 we certainly are trying to get done as quickly as we
4 can. So, we definitely recognize the value and intend
5 to do that.

6 ---oOo---

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECTION 2020

MS. PELLEGRINI: Okay. We are now on 2020, and I would like to get through the next couple of pages and we'll need to take a break for our Court Reporter.

So, 2020, the Addresses for Filing a Petition for Redetermination.

MR. GOLOMB: I have a comment on 2020. Can I -- just a clarification. I don't have a problem with the addresses. The addresses are what they are.

MS. MANDEL: Yeah, just --

MR. GOLOMB: But if you're an uninformed taxpayer, many times you'll mail it to the local district office, mail it to the auditor, hand-deliver it. And it really doesn't mention anywhere that you can do that. And I think that should be addressed, that if I prepare and file a petition, and I provide it to any authorized Board staff member, the Board has received it.

So, I can hand-deliver it. I can mail it.

The other question I just wanted to throw out on the table, what about faxing a -- a petition and/or e-mailing a petition? Because, obviously, as we move forward in time, technology will be advancing and there may be other alternatives to snail mail. And you really don't address any of those.

And so, if I fax a petition to Phil Spielman in the Petition Unit, and the original gets lost in the mail, do I have a valid petition on file?

1 MR. HELLER: Okay.

2 MR. GOLOMB: And -- and to be honest, I do that
3 on purpose for that reason.

4 MR. SHAH: You lose it on purpose?

5 MR. GOLOMB: No. Just in case it gets lost, I
6 fax it and mail a copy.

7 And I say on the fax the original to follow by
8 mail. But so much paper comes into the agency --

9 MS. MANDEL: Just make sure you put it on your
10 fax machine correctly so they don't get six more pages.
11 I've seen that happen.

12 MR. GOLOMB: Oh. No, I don't -- but that's --
13 that doesn't address anywhere. All it says is, you
14 know, you mail it, but what about all the other
15 alternatives of providing the petition to the Board of
16 Equalization? I think those should be addressed in some
17 fashion.

18 MS. PELLEGRINI: We'll address those.

19 Anything else on the addresses section?

20 MR. VINATIERI: That -- that -- Abe's -- Abe's
21 statement is responsive to mine. As I indicated, what
22 if the petition is not sent to the right group.

23 So, yeah, I think it would be a good idea if --
24 I like the fact that, you know, your -- you've -- you've
25 laid it out to send it to the specific mix. But if
26 someone just doesn't get it right, they just send it to
27 the Board of Equalization, and that should not
28 disqualify them.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

---oOo---

SECTION 2021

MS. PELLEGRINI: 2021, Assignment and
Acknowledgement of the Petition for Redetermination.

MR. VINATIERI: I threw in -- this is Joe -- I
threw in a modifier there, the word "promptly."

MR. HELLER: Is that in (b)?

MR. VINATIERI: That would be in (b) where it
says, "Board staff: -- it says "Once the petition is
assigned to the appropriate section or group, Board
staff" -- I'm sorry, I'm reading too fast -- "from that
staff" -- "section or group will send -- will promptly
send the petitioner a letter acknowledging receipt of
this Petition for Redetermination."

I'm not -- I'm not locked in concrete. The
idea is just to make sure things are done timely.

MR. LEVINE: Have you seen delays?

MR. VINATIERI: Not -- not recently. There
have been some issues in the past, but, no, it's usually
pretty good right now. I like the way it is right now;
it is prompt. So --

MR. HELLER: Keep that.

MS. PELLEGRINI: Okay. Any other comments on
2021?

---oOo---

1 SECTION 2022

2 MS. PELLEGRINI: We're on page 7 now. 2022,
3 Review of the petition and Referral to District Office
4 or Audit Group.

5 MR. VINATIERI: This is Joe. I've got a
6 question on the process. I -- I know that the process
7 used to be that when the petition came in it was
8 reviewed and either sent back to the district or what --
9 got sent directly over to Appeals.

10 There are times -- what -- excuse me, the way
11 this is written up, it's mandatory that the petition is
12 assigned -- "will refer the petition back to the
13 district office or audit group."

14 There are definitely times where that is a
15 waste of time. And that it's much better to just move
16 it up to Appeals Division. Obviously, that involves
17 discretionary judgment on the part of whoever is
18 reviewing these petitions.

19 But the system is such that where you have --
20 it's been very -- it's very clear at the District office
21 level that it's not going to get resolved, it adds at
22 least 30 to 60 to 90 days to that timeframe.

23 If we're -- if what we're trying to do here is
24 make sure that as many petitions are done timely and
25 quickly as possible, then I would suggest that you
26 continue to utilize discretion and take out the word
27 "will," which is mandatory and use the word "may"
28 instead.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MS. PELLEGRINI: Comment noted. Any other
comments?

---oOo---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECTION 2023

MS. PELLEGRINI: We are now on 2023, the Assignment of the petition to the Appeals Division.

MR. GOLOMB: Oh, I have one comment -- actually on the top of page 8, regarding to -- say, 2022.

A case is referred back to the District, they do their investigation, they write their report, they indicate to headquarters that the taxpayer agrees.

MS. MANDEL: And they're wrong.

MR. GOLOMB: And the taxpayer really didn't agree. So one of the things I suggest is that before headquarters automatically assumed that the taxpayer agrees, that they confirm with the taxpayer or their representative that that is correct. Because that has happened to me.

MR. SHAH: Abe, is this on a reaudit?

MR. GOLOMB: Yes. Reaudit or any type of investigation.

MR. SHAH: In reaudit they do send out a letter to the taxpayer saying what -- whether they agree or not.

MR. GOLOMB: Yeah, but a lot of times people don't understand the -- the implications of what that means. You know, that letter means.

And it's too easy for a case to get redetermined when a taxpayer really doesn't agree, and the process just automatically moves forward.

So, I suggest that language be put in there

1 that the petition -- whatever headquarters unit is
2 working on that, that they verify the correctness of
3 that statement. Otherwise you have to come back and get
4 the Notice of Redetermination undone and go -- you know,
5 get reinstated and all that.

6 And I'm afraid with -- once this is in
7 statutory language that may be impossible.

8 MS. PELLEGRINI: Comment noted.

9 Any other comments on page 7?

10 MR. VINATIERI: Yes, I -- 7 or 8? Okay.

11 MS. PELLEGRINI: Either, yes.

12 MR. VINATIERI: I have a -- a comment with
13 regard to 8. This is (d)(2). This is where it gets
14 sent back to the District; it's not agreed upon. And I
15 just want to make sure I -- I'm reading this correctly.

16 It's -- it's -- the language here is predicated
17 on the fact that the petitioner requested an Appeals
18 Conference or an oral hearing.

19 What happens if the taxpayer did not in their
20 petition request an oral hearing? Then what happens?

21 Is it just left up in never never land or where
22 does it go?

23 MR. HELLER: You need a procedure to just go
24 ahead and issue the Notice of Determination at that
25 point, is what you're thinking?

26 MR. VINATIERI: I think if that's what -- what
27 it is, then I think it ought to say that, so that they
28 know that if they haven't requested a hearing and the

1 District disagrees upon referral, then they need to know
2 that you're going to get a Notice of Redetermination.

3 MS. PELLEGRINI: Any other comments then on our
4 Article 2A?

5 23.

6 MR. VINATIERI: Yeah, I -- Joe again. I had a
7 concern -- I put an interlineated sentence here where it
8 says, "Once the assigned section or group completes its
9 summary analysis of the Petition for Redetermination," I
10 want to make sure that a copy of the summary analysis is
11 prepared to the taxpayer and the entire file is
12 forwarded to Case Management.

13 I think that's pretty much the practice now. i
14 believe it is. But as long as we're formalizing some of
15 the procedures, let's -- let's put it down in writing.

16 MS. PELLEGRINI: Okay. With that we will be
17 taking a five-minute break. Actually, we'll return here
18 at 5 minutes till. About seven minutes.

19 ---oOo---

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARTICLE 2B
FILING A LATE PROTEST
SECTION 2030

MS. PELLEGRINI: All right. We are now starting Article 2B, Filing a Late Protest. And it is 2030, Untimely Petition as Late Protest.

Comments, please.

MS. ARMENTA-ROBERTS: I have --

MR. GOLOMB: Yes. Go ahead, I'm sorry.

MS. ARMENTA-ROBERTS: It's Joan Armenta-Roberts. On Part (c), where it's the -- "the Board has discretion to grant or deny an Appeals Conference or oral hearing," my question is who makes the decision to grant or deny? And what is the basis for the decision?

And if the staff is making the decision -- decision, does the taxpayer have any recourse?

MR. MICKEY: May I add a comment to that. We're on the same issue, of course.

Kai Mickey. I would like to see Section (c) have discretion eliminated where there -- if a late protest is accepted, that they will grant an Appeals and a Board hearing just like they would under a petition. A timely petition. Completely remove the discretion.

MR. SHAH: I'm sorry, what was the answer?

MS. MANDEL: We don't have an answer. Brad is just writing furiously.

MR. GOLOMB: This is Abe Golomb. I agree a

1 hundred percent with Kai Mickey. Otherwise there is no
2 point in a late protest being accepted. It's accepted
3 and you're not granted any hearings, what's the point?
4 I mean, you know --

5 MR. LEVINE: I will agree with that. I had a
6 problem with this. I think that if staff is not going
7 to move it on, they should just refuse it up front.

8 MR. HELLER: Okay. And would you have a
9 comment on who should decide when we should -- who
10 should accept the petition then?

11 MR. LEVINE: How they've been doing -- things
12 have gotten a lot more lenient than in the old days. In
13 the old days a late protest was only allowed if they
14 thought there was a reasonable likelihood that there was
15 a mistake.

16 MS. ARMENTA-ROBERTS: But what -- how old?
17 What's the old days?

18 MR. LEVINE: But I don't know what the process
19 is --

20 MS. PELLEGRINI: We'll let Joe speak to this.

21 MR. YOUNG: This is Joe Young. We've been
22 pretty lenient, like David says, with late protests.
23 Unless, you know, it's really late late, you know,
24 several years late, then obviously, you know, those will
25 not be granted, but --

26 MR. SHAH: What's late late, Joe?

27 MR. YOUNG: Yeah. But, you know, if -- if, you
28 know, it's reasonable and then the grounds are

1 sufficient that we think there will be adjustment,
2 generally there's no problem accepting late protests.

3 And once the late protest is accepted, we
4 provide them with the same ground, appeals conference,
5 they request a Board hearing, we go right through that
6 same process.

7 So, I agree that the (c) may not be necessary
8 in that particular case.

9 MS. PELLEGRINI: Any other comments on 2030?

10 MS. ARMENTA-ROBERTS: Who is making the
11 decision in staff? Someone in -- in the Petition
12 Section, staff level?

13 MR. YOUNG: Generally, yes. If we --

14 UNIDENTIFIED SPEAKER: Referring to Section
15 (c)? I'm not aware that's ever occurred, that -- that
16 there's been denied an Appeals Conference. Once it's
17 set up as a late protest.

18 MS. ARMENTA-ROBERTS: Now, who accepts a late
19 protest? If it's -- but if it's denied, how would -- is
20 there a recourse or is the taxpayer told there's any
21 kind of recourse --

22 UNIDENTIFIED SPEAKER: If your staff filed it
23 on time.

24 MS. ARMENTA-ROBERTS: -- if your staff denies
25 it.

26 MR. YOUNG: Yeah, this is --

27 MS. ARMENTA-ROBERTS: Well --

28 MR. LEVINE: You know, the history is, this is

1 something that evolved that wasn't actually permitted by
2 the statute, but --

3 MS. MANDEL: Well, but the -- the question is
4 that if they're late protests it's denied. Are they
5 told that if they pay the tax and file a refund claim
6 that then they can get administrative review?

7 MR. LEVINE: Right.

8 MR. SHAH: They have a form letter that
9 Petition sends out about this.

10 MR. YOUNG: Right. We -- we denying the late
11 protest and, you know, we state on the denial letter
12 that they have -- they -- they should pay the
13 determination and file a claim for refund. That will
14 get them into the -- the administrative review process.

15 MR. SHAH: And don't they also add language,
16 "However, we don't want to collect more tax than is due,
17 and so please provide information"?

18 MR. YOUNG: So, you know.

19 But, you know, that's the circumstance, we
20 think, you know, they have some legitimacy with the late
21 protest. We generally accept it, anyway.

22 So, it's only in situation where we find
23 there's absolutely no grounds for accepting the late
24 protest that it would be denied.

25 MS. ARMENTA-ROBERTS: Is there guidelines on
26 when to accept and when not to with your staff, or is
27 that just their own discretion?

28 MR. YOUNG: Pretty much, you know, we leave it

1 up to the discretion of the staff. Because they -- they
2 have the file, they know -- analyze all the situation,
3 all the issues involved and most of the time, you know,
4 they just pretty -- are pretty accurate.

5 You know, so I think the outside representative
6 would know that we don't deny them really late protest.

7 MS. ARMENTA-ROBERTS: Well, I am not concerned
8 with myself. I -- I think there's just a lot of
9 taxpayers that don't understand their -- that they can
10 continue protesting it, or that they're -- it is only at
11 the staff level, they can actually maybe call the
12 Taxpayer Bill of Right or Taxpayers Rights office, or
13 their Board Member if they felt like they are not
14 being -- you know, they don't know which way to go.

15 So, I'm just asking who makes the decision. Is
16 it -- what level?

17 MR. SCHUTZ: Joe, I have a quick question for
18 you. This is Chris Shut.

19 Is there any review of when somebody submits a
20 late protest to see if they -- they recently made a
21 payment, and whether that payment, that late protest
22 could clearly be considered for that -- that portion of
23 the payment that they made a claim for refund?

24 Even though it's -- even though the -- the
25 taxpayer has labeled it, "This is a late protest," but I
26 mean it has maybe generally all the language needed
27 to -- to meet a claim for refund.

28 MR. SPIELMAN: This is Phil Spielman from

1 Business Section. Did -- in that case if a late protest
2 comes in and a payment is detected then a copy of that
3 document is forwarded over to the Refund Section to set
4 up a partial claim for refund.

5 MR. SCHUTZ: Thank you.

6 MR. YOUNG: We usually will not take any action
7 until the payment is in full for the tax portion.

8 ----oOo----

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECTION 2031

MS. PELLEGRINI: 2031, Accrual of Interest.

MR. SCHUTZ: And here I'd have a comment as far as in -- in this case, a late protest is filed and they've made payments, they're making payments, there may need to be an admonition here that you do need to file a claim for refund, because the -- it's not necessarily in petition status.

MR. SPIELMAN: This is Phil Spielman again. The late protest letter does advise them that they have to file a protective claim for any remains. We did have a problem with that years back; they didn't realize it. So it is --

MS. MANDEL: Well, if it's in the letter then maybe it goes in -- something goes in 2032 --

MR. LEVINE: Or 32.

MS. MANDEL: 32 is on collections.

MR. SCHUTZ: Yes.

MS. MANDEL: And then -- then that would flip them to the refund rules that are --

MR. SCHUTZ: Right, maybe some sort of cross-reference to please see the refund rules.

MS. MANDEL: 2031 and 32.

MS. ARMENTA-ROBERTS: Okay.

MR. MICKEY: Question on 2031, perhaps. Kai Mickey again. It may be helpful to taxpayers who are maybe looking at this and representatives who don't understand this, that there be clarification that the

1 Board doesn't have any authority to stop or remove
2 interest down the road that has accrued.

3 Some -- I've run into cases where I've talked
4 to my clients who thought perhaps they could argue
5 interest only, and there's just no statutory provision.

6 So, maybe just a clarification that there is no
7 hope for that interest being removed. It might be
8 beneficial.

9 MS. MANDEL: Well, there is some statutory
10 authority.

11 MR. LEVINE: (voices in unison) -- that require
12 for relief, but it would require us -- and I don't -- I
13 have no opinion on whether it should be there, I'm just
14 saying if we put in anything we'd have to finish the
15 thought by saying "unless there's grounds for relief
16 under 6593.5." --

17 MS. MANDEL: All at once.

18 MR. LEVINE: -- "and disaster, unreasonable
19 delay under 6596."

20 It's either all or none --

21 MR. MICKEY: That's true.

22 MR. LEVINE: -- that type of thing.

23 MS. PELLEGRINI: Any other comments?

24 ---oOo---

25

26

27

28

SECTION 2032

MS. PELLEGRINI: 2032, No Stay of Collection Activities.

MS. ARMENTA-ROBERTS: This is Joan Armenta-Roberts.

This has been granted at times in the past, so I think this is actually saying that it's never allowed here, putting in the regulation.

It goes against what's been allowed in the past. And why that's being put in there.

MR. SHAH: Because it's final, right?

MR. HELLER: Yes, it's final.

MS. MANDEL: Joan is just saying somehow --

MR. HELLER: We want to make it clear there's discretion in staff to agree to stay collections. But that -- this was only intended to point out that like if you send this letter in, don't expect that somebody who's about to levy on your bank account's going to just freeze and not levy on your bank account. Because they are legally entitled to.

And assuming that no one in staff has been notified and made a decision to -- to stay collections, then there is a final liability that can be collected on at the time.

So that was really all we were trying to convey. It certainly wasn't designed to -- to reduce the discretion we have.

MS. ARMENTA-ROBERTS: But you could -- they can

1 request a -- a stay.

2 MR. HELLER: Okay, so want to introduce some
3 additional language that would allow a request and --

4 MR. GOLOMB: This is Abe Golomb.

5 Let -- as Joe said, when they accept a late
6 protest the possibility of adjustment is very high.
7 Otherwise what's the point of accepting it?

8 MR. HELLER: Right.

9 MR. GOLOMB: So, obviously, if they're going to
10 adjust the liability downward --

11 MR. HELLER: Okay.

12 MR. GOLOMB: -- there's no point in having a
13 taxpayer pay that liability that's going to be adjusted
14 out.

15 So, it's very obvious there has to be some
16 discretion allowed to the staff, because otherwise the
17 poor taxpayer is paying liability that will obviously be
18 adjusted out. And/or the process has to be speeded up
19 so rapidly to make that adjustment quicker so they don't
20 have to pay the liability.

21 The way to solve the problem is to allow
22 discretion. Obviously, if it's recognized that, let's
23 say, half the bill or three-quarters of the bill or
24 whatever is really not due for various reasons, there's
25 no point in having them pay that portion of the bill.
26 And so the discretion has to be there, otherwise
27 you're -- you're running into this bureaucratic
28 nightmare of collecting money and then immediately

1 turning around and trying to go through the Refund
2 Section to refund it. And why avoid that nightmare.

3 MS. ARMENTA-ROBERTS: I had that exact
4 situation just happen. And the audit -- it was -- they
5 were only late by a week or so. They misunderstood the
6 letter. And by the time it got to me, we asked for a
7 late protest.

8 Late protest was accepted, stay was not, and
9 they paid, you know, like \$100,000 or something, I
10 forget what it was. But it's brought down to like 10.
11 Now they have to go through the refund process, you
12 know, and wait six months or longer to get their money
13 back.

14 And the decision to stay -- I was basically
15 told, "We don't do that," and that, "We never do it,
16 rarely."

17 So, I -- I think it should be raised at a
18 higher level or it should be put in that you can request
19 it, but I don't think it should be at a lower level
20 staff to determine this.

21 And if they can't make the decision, they
22 should pass it up. Take it up higher.

23 ms. MANDEL: I guess on -- on every single one
24 of these, to the extent you're trying to alert taxpayers
25 to the consequences, which is what you were probably
26 thinking of, is don't think, as you said, that filing
27 late gets you out of any collection action to the extent
28 that -- that there are other things that could happen.

1 You kind of have to do the David's -- you know,
2 I like that complete the thought type of comment.
3 Because this would look like it doesn't and -- and never
4 will. And if that's -- if in fact it sometimes does get
5 stayed for reasons, I mean any -- in any one of these
6 rules, what you're trying to do is alert people to the
7 consequences of their action.

8 You have to think of both sides of the --

9 MS. ARMENTA-ROBERTS: Well, when -- when would
10 it -- when would it? I mean, I ask this to -- to the
11 two of you, Joe and Phil. When would you allow it, a
12 stay?

13 MR. SPIELMAN: This is Phil Spielman. I can
14 answer that. Generally speaking, the first thing that
15 would warrant a stay is if there's been some error or
16 lack of follow-through on the Board's staff and clearly
17 explaining the appeals process. And the most egregious
18 situation would be where the representative is not sent
19 a copy of the audit report and notice.

20 So, the taxpayer was legally served with the
21 notice and should have filed within 30 days, but their
22 known representative didn't receive the audit or notice
23 of determination, and therefore the representative
24 didn't file it timely; that confusion usually is because
25 Board staff didn't follow through. In that case we
26 would sundry --

27 HEARING REPORTER: In that case we would --

28 MR. SPIELMAN: We would --

1 MR. LEVINE: Sundry.

2 MR. VINATIERI: Sundry withhold.

3 MR. YOUNG: Sundry withhold.

4 MR. GOLOMB: There's another situation. I
5 represented a taxpayer that was located in Australia.

6 MS. MANDEL: Oh. How long is the mail to
7 Australia?

8 MR. GOLOMB: Yeah. And the Board sent a Notice
9 of Determination but obviously did not put sufficient
10 postage, because, you know, how many taxpayers are
11 located outside the State -- you know, the United
12 States.

13 Well, the Post Office returned that letter to
14 the Board, but it took longer than 30 days. And so, in
15 that case the taxpayer was granted late protest.

16 So, I think there -- there has to be discretion
17 because otherwise under the law a taxpayer didn't file,
18 it was mailed, but they couldn't receive it because
19 of errors on the Board staff's behalf.

20 But, legally, if you read the law, it just says
21 you have to put it in the mail. It doesn't say you have
22 to put sufficient postage on it.

23 MS. MANDEL: Well, come on. You come the other
24 way, though --

25 MR. GOLOMB: You know.

26 MR. LEVINE: If you would have brought it to
27 Appeals, to be quite frank, we would have said that's --
28 as long as they got it filed within 30 days after they

1 got it --

2 MR. GOLOMB: Got it, yeah.

3 MR. LEVINE: -- that it necessarily requires
4 that you put enough postage on it.

5 MR. GOLOMB: But, yeah -- so --

6 MR. LEVINE: Are you sure it cost more to send
7 something to Australia?

8 MR. GOLOMB: It cost -- I don't know what
9 the -- but it's more than 37 cents.

10 MR. LEVINE: It's more than the same thing?

11 MR. GOLOMB: Yeah, it's more than 37 cents.
12 Or whatever their --

13 MS. PELLEGRINI: Any other comments on 2032?

14 ---oOo---

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARTICLE 2C

CONTESTING A JEOPARDY DETERMINATION

SECTION 2040

MS. PELLEGRINI: If not, we'll move on to Article 2C, Contesting Jeopardy Determination. 2040. It's Notice of Jeopardy Determination is Immediately Due and Payable.

Comments?

---oOo---

SECTION 2041

MS. PELLEGRINI: 2044, Security Requirements -- I'm sorry, 2041, Persons Who May Petition a Notice of Jeopardy Determination.

MS. PELLEGRINI: 2042.

Mr. GOLOMB: What about 2041, I apologize?

MS. PELLEGRINI: Sure.

MR. GOLOMB: Allowing that person's representative to file a petition. It just says the person. So, obviously, if they have a representative that person -- that representative should be also authorized to file.

MR. LEVINE: David Levine. I think that's by operation of law. Your actually authorized representative, we always allow --

MS. MANDEL: Except at the beginning, the first rule on who can file a petition specifically refers to a representative under certain circumstances.

MR. LEVINE: I personally would.

1 MS. MANDEL: Yeah. That's why I had a
2 question.

3 MR. LEVINE: I always take out all
4 representatives because I think the representative, as
5 long as you're duly authorized, can act for the --

6 MS. MANDEL: Right.

7 MR. LEVINE: -- taxpayer/feepayer, et cetera
8 until that representation is revoked.

9 MS. MANDEL: Well, that -- that's why I sort
10 of -- when I saw it in the first one, I was like, where
11 is this from. But that's why Abe's raising it, because
12 it's in the first one and it's not here, right?

13 MR. GOLOMB: You know, I'm just --

14 MS. MANDEL: Just like to be consistent.

15 ---oOo---

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECTION 2042

MS. PELLEGRINI: Okay. 2042, The Content of the Petition for Redetermination of Notice of Jeopardy Determination.

---oOo---

SECTION 2043

MS. PELLEGRINI: 2043, Limitation Period for the Petition for Redetermination of Notice of Jeopardy Determination.

2044, Security Requirements for Petitions.

MS. MANDEL: It's -- it's been a long time. Is that Section 2043, that's the standard --

MR. HELLER: Statutory.

MS. MANDEL: -- way that you -- that's the statute or that's --

MR. VINATIERI: It's the statute.

MR. HELLER: Well, that one's referring up to the Statute of Limitations.

MS. MANDEL: Yeah, and that -- that -- my question was whether for regulation purposes if -- over at OAL is that -- is that the way one would make the reference?

Do they say "section" if you were referring from one regulation to another regulation. Or is it regulation such and such of this article?

I mean, just make sure that the reference is --

MR. HELLER: Correct.

MS. MANDEL: -- because notice what he said

1 immediately, that's the tax Code section.

2 MR. HELLER: California code -- regulations are
3 actually sections of the California Code of Regulations.

4 MS. MANDEL: Yeah, but just as long as our
5 cross-reference is clear enough.

6 MR. HELLER: Yeah, we will definitely clear
7 that with OAL before we send any packages up for their
8 approval or review.

9 We're hoping to meet with them prior to sending
10 any of this stuff over to them.

11 MS. MANDEL: Yeah, because it's going to be
12 such a big package.

13 MR. HELLER: And it's going to be very large.

14 MS. MANDEL: And they're going to be going,
15 what?

16 MR. HELLER: That's right. We wanted them to
17 have the staff on hand and a good concept of what we're
18 trying to accomplish.

19 ---oOo---

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECTION 2044

MS. PELLEGRINI: 2044, that's the Security Requirements for Petitions.

---oOo---

SECTION 2045

MS. PELLEGRINI: 2045, the Administrative Review of Petitions for Redeterminations of Jeopardy Determinations.

MR. GOLOMB: I have a comment on 204 -- I think it's 2045. Actually, it combines with 2046.

You can ask for an administrative hearing, get your 30 days, and, you know, you have to list why you want it.

And one of the things, obviously in a jeopardy, collection is not stayed, everything moves forward against the taxpayer faster. And one of the things I think that's important in that process here is that the request for administrative hearing, et cetera, should also move forward quicker, because otherwise the taxpayer, especially if they believe that the jeopardy was issued in error, you know, because once it's issued it cannot be unissued. It cannot be undone, so to speak.

And I've had situations where the hearing process unfortunately sometimes took longer than it should have. So --

---oOo---

SECTION 2046

MS. PELLEGRINI: 2046, Application for Administrative Hearing. I think that's kind of what was already being addressed. Anybody have comments?

MR. VINATIERI: Yeah. This is Joe.

I had changed the language, where it said "in lieu of filing petition for redetermination," I put "in addition to", because I think the statute -- I think the statute allows both.

Obviously, to the extent you file a Petition for Redetermination and you don't post the security -- the petition is not going to be accepted. As well as it should not be.

But I thought it would be a good idea that just to -- to provide flexibility to taxpayers that if somebody wants to file both petition and an application or deemed -- it would deem both of them.

I just thought it would be better to -- to allow -- to do both of them rather than just the -- the singular. I don't know that it adds that much to be candid with you, but it's pretty important that when it comes to this administrative hearing, a lot of people -- at least ones where I've been involved with, the administrative hearing is extremely important because you're talking about the due process of law and the sale of -- of a person's assets, et cetera.

And so, there has to be real meat to the administrative hearing, and the ability of the reviewing

1 staff to -- to look at something objectively and -- and
2 stop something from happening, if that's the appropriate
3 thing to do under the circumstances.

4 So I'm -- I'm just giving you my general
5 speech about the administrative hearing, because this
6 is -- sometimes is the only meaningful thing that
7 they're going to have an opportunity to deal with before
8 being dispossessed of life, limb and property.

9 MR. LEVINE: David Levine. I can never keep
10 these two straight, so I don't know how -- I can't
11 remember how they interact.

12 Just looking at the wording you suggest "in
13 addition to" at least arguably could be interpreted to
14 mean you got a pot of -- do the other --

15 MR. VINATIERI: That's true.

16 MR. LEVINE: -- and do this one, too.

17 So, if "in lieu" isn't good, I'd suggest
18 something else.

19 MR. VINATIERI: I -- I would agree with what
20 you just said.

21 MS. MANDEL: Well, then you would take out
22 the -- the first phrase and start it with "the person
23 against whom."

24 Well, OAL may not like this.

25 MR. LEVINE: Just "may also".

26 MS. MANDEL: "May also".

27 MR. LEVINE: "May also" --

28 MS. MANDEL: Yeah.